

Message Text

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ACTION SCS-06

INFO OCT-01 ARA-10 ISO-00 CA-01 L-03 H-01 JUSE-00

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FM AMEMBASSY MEXICO

TO SECSTATE WASHDC 7525

INFO ALL USCONS MEXICO POUCH

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E. O. 11652: N/A

TAGS: CARR, MX

SUBJECT: U. S. MEXICO PRISONER TRANSFER TREATY - POST
TRANSFER PROBLEMS

REF: MEXICO 00229

DEPARTMENT PASS BUREAU OF PRISONS CARLSON' JUSTICE ABBELL

1. SUMMARY: DEPARTMENT SHOULD BE AWARE THAT PROBLEMS
HAVE ARISEN IN CERTAIN CASES WITH RESPECT TO "WORK
CREDITS" II. E., CREDITS WHICH REDUCE TIME TO BE
SERVED) CERTIFIED BY GOM WHEN PRISONERS WERE TRANS-
FERRED. BASIC PROBLEM IS THAT GOM'S PREVENCIÓN SOCIAL
(ROUGHLY EQUIVALENT U. S. BUREAU OF PRISONS) COMPLETED
INDIVIDUAL FILES ON SOME TRANSFER-ELIGIBLE PRISONERS,
INCLUDING WORK-CREDIT COMPUTATIONS, AS MUCH AS FOUR
MONTHS BEFORE THE TRANSFERS, AND FAILED IN SOME CASES
TO INCLUDE WORK CREDITS EARNED OR COMPILED AFTER
FILES WERE COMPLETED. MATTER HAS BEEN TAKEN TO
ATTORNEY GENERAL'S OFFICE WHICH HAS INDICATED A
WILLINGNESS TO RESOLVE THE PROBLEMS.

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2. EMBASSY WAS ADVISED BY BUREAU OF PRISONS/JUSTICE
OFFICIALS OF A NUMBER OF COMPLAINTS BY RETURNING
PRISONERS THAT INSUFFICIENT WORK CREDIT HAD BEEN
CERTIFIED BY THE GOM IN THEIR INDIVIDUAL MEXICAN
PRISON FILES. EMBASSY HAD ALSO BEEN MADE AWARE BY
U. S. BUREAU OF PRISONS OFFICIAL THAT PREVENCIÓN SOCIAL
SUBORDINATE OFFICE AT SANTA MARTA PRISON HAD TRANSMITTED

A LIST OF CERTAIN INDIVIDUALS UPDATING THEIR WORK CREDITS TO PREVENCIÓN SOCIAL CENTRAL OFFICE UNIT WHICH PREPARED CASES FOR TRANSFER TO THE UNITED STATES.

3. IN AN EFFORT TO OBTAIN DOCUMENTATION OF FINAL COMPUTATION OF WORK CREDITS, EMBASSY LEGAL ADVISER DID EXAMINE THE FILES IN THE CUSTODY OF PREVENCIÓN SOCIAL SUBORDINATE OFFICE AT SANTA MARTA. THE TOTAL WORK DAYS LISTED IN EACH FILE EXAMINED, WITH ONE EXCEPTION, AGREED WITH THE CLAIMS OF THE PRISONERS FOR ADDITIONAL CREDITS.

4. LEGAL ADVISER THEN APPROACHED ATTORNEY IN PREVENCIÓN SOCIAL CENTRAL OFFICE WHO IS RESPONSIBLE FOR PREPARING THE FILES FOR TRANSFERRED PRISONERS. IN COURSE OF THIS CONVERSATION LEGAL ADVISER WAS INFORMED THAT:

(A) PREVENCIÓN SOCIAL DID NOT HAVE THE STAFF OR THE FUNDS TO BE ABLE TO UPDATE FILES AND CONDUCT A SURVEY OF EACH PRISON FOR THAT PURPOSE;

(B) PREVENCIÓN SOCIAL HAD, WHERE POSSIBLE, OBTAINED WRITTEN COMPUTATIONS FROM PREVENCIÓN SOCIAL OFFICE AT SANTA MARTA (SAMPLES OF COMPUTATIONS SHOWN LEGAL ADVISER WERE NOT ALWAYS COMPLETE WITH ALL REQUIRED SIGNATURES) AND, WHERE NECESSARY, OBTAINED INFORMATION LIMITED OFFICIAL USE

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BY TELEPHONE;

(C) THE U. S. GOVERNMENT, IN ACCEPTING THE PRISONER WITH THE CERTIFIED DOCUMENT, WAS ACCEPTING THE WORK CREDIT RECORDS AS CERTIFIED AND RECORDS COULD NOT NOW BE ALTERED;

(D) PREVENCIÓN SOCIAL WOULD NOT NOW UPDATE THE FILES OF RETURNED PRISONERS TO REFLECT NOTIFICATIONS OF ADDITIONAL CREDITS RECEIVED BY THEM SUBSEQUENT TO DATE OF CERTIFICATION EXECUTED FOR TRANSFER PURPOSES;

(E) PREVENCIÓN SOCIAL HAS BEEN REFUSING EMBASSY OFFICERS ACCESS TO ANY FILES WHICH MIGHT ESTABLISH ADDITIONAL CREDITS;

(F) FINAL RATIONALE GIVEN WAS THAT U. S. PRISONERS HAD "BOUGHT" CREDITS FROM "POOR" MEXICANS AT THE LAST MINUTE.

5. CONSUL GENERAL MCANINCH PRESENTED LETTER TO EXECUTIVE OFFICER OF ATTORNEY GENERAL'S OFFICE,

LIC. BAEZA, ON JANUARY 10, 1978, CONTAINING AS MUCH DOCUMENTATION AS WAS AVAILABLE AND PERTINENT WITH RESPECT TO THE 14 CASES CONTAINED IN REFTEL. BAEZA INDICATED HIS APPRECIATION OF THE PROBLEM AND INDICATED THE ATTORNEY GENERAL'S OFFICE HAD APPROPRIATE LEGAL AUTHORITY TO INQUIRE INTO SUCH MATTERS AND RESPOND TO THE EMBASSY'S LETTER.

6. PRIOR TO MEETING WITH ATTORNEY GENERAL'S OFFICE, EMBASSY INVESTIGATION INTO MATTER HAD REACHED FOLLOWING CONCLUSIONS:

(A) PREVENCIÓN SOCIAL PREPARED ITS DOCUMENTATION FOR PRISONERS, INCLUDING WORK-CREDIT TIME, SEVERAL MONTHS LIMITED OFFICIAL USE

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BEFORE THE ACTUAL TRANSFER. CERTIFICATIONS WITH WORK CREDITS WERE TYPED AS EARLY AS JULY OR AUGUST WITH NO CHANGES MADE AFTER THE INITIAL COMPUTATIONS, IN SPITE OF THE FACT THAT NUMEROUS WORK-CREDIT NOTIFICATIONS WERE TRANSMITTED AND PRESUMABLY RECEIVED AT PREVENCIÓN SOCIAL AS LATE AS EARLY DECEMBER.

(B) IN SOME OF THE CASES IT WAS APPARENT THAT THE WORK CREDITS GRANTED RECENTLY BY THE TECHNICAL

COMMISSION FOR PRISONS IN THE FEDERAL DISTRICT
(THIS WOULD BE CASE OF LECUMBERRI PRISON CREDITS)
WERE NOT TAKEN INTO ACCOUNT AT ALL. SIMILARLY, WORK
CREDITS ACCRUED BY SOME PRISONERS IN OTHER PRISONS
SUBSEQUENT TO THEIR TRANSFERS FROM LECUMBERRI WERE
NEVER OBTAINED OR CALCULATED.

(C) THE DOCUMENTATION FOR SOME CREDITS WAS ADMITTEDLY
GIVEN TO THE CENTRAL OFFICE OF PREVENCIÓN SOCIAL PRIOR
TO TRANSFER. MOREOVER, IN A SUBSEQUENT CONVERSATION
WITH THE ATTORNEY WHO IS IN CHARGE OF THE PREVENCIÓN
SOCIAL CENTRAL OFFICE COMPILING THE FILES FOR THE
TRANSFER, EMBASSY LEGAL ADVISER WAS TOLD THAT THE
CENTRAL OFFICE OF PREVENCIÓN SOCIAL WOULD NOT LOOK
BEHIND (I. E., SECOND GUESS) THE CALCULATIONS OF
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THEIR OFFICE AT THE SANTA MARTA PRISON.

(D) IN ADDITION, DURING A REGULAR VISIT ON DECEMBER
27 TO ANOTHER PRISON, RECLUSORIO NORTE, A CONSULAR
OFFICER VERIFIED THAT AT LEAST IN ONE CASE WORK
CREDIT HAD BEEN PREPARED FOR A TRANSFERRED AMERICAN
PRISONER WHICH WAS NOT COMPUTED BY PREVENCIÓN SOCIAL
SUBORDINATE OFFICE AND THEREFORE NOT INCLUDED IN
THAT PRISONER'S FILE BEFORE HE RETURNED TO THE
U. S.

(E) SOME OF THE FINAL CALCULATIONS WERE COMPUTED IN
LATE NOVEMBER (AND IN ONE CASE DATED AS LATE AS
DECEMBER 9) BY THE PREVENCIÓN SOCIAL SUBORDINATE
OFFICE AT SANTA MARTA PRISON. THAT OFFICE ASSUMED
THAT ITS FINAL CALCULATION OF CREDITS BASED ON RECEIPT
OF ALL OF THE DOCUMENTATION WOULD BE CREDITED TO THE
INDIVIDUAL, BUT THEY WERE NOT.

(F) THE EMBASSY DID NOT FIND ANYTHING TO SUBSTAN-
TIATE THAT THE CREDITS WERE "BOUGHT" AT THE LAST
MINUTE. FURTHER CONVERSATIONS WITH PREVENCIÓN SOCIAL
CENTRAL OFFICE INDICATED THAT A CUT OFF WAS DICTATED
ON UPDATING ANY DOCUMENTS WITH NEW INFORMATION RECEIVED.
THE CUT OFF WAS BELIEVED TO BE ABOUT OCTOBER 1 BUT
POSSIBLY EARLIER. DOCUMENTS GRANTING WORK CREDITS,
SOME BASED ON EMBASSY REQUESTS EARLY IN 1977,
INDICATE ACTION WAS NOT TAKEN UNTIL JUST PRIOR TO
THE TRANSFER AND LIKELY DID NOT REACH THE MAIN
PREVENCIÓN SOCIAL OFFICE IN TIME TO BE INCLUDED IN
THE CERTIFIED WORK CREDITS. ONE RECENT CASE OF
SUBSTANTIALLY INCREASED CREDIT (63 TO 995) ALSO
SUPPORTED THE VIEW WHICH INFORMAL CONVERSATIONS

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WITH THE OFFICERS AT THE SUBORDINATE OFFICE LED EMBASSY TO CONCLUDE: THE CLAIM OF "BOUGHT CREDITS" WAS BEING USED AS AN EXCUSE TO COVER BUREAUCRATIC FAILURE. MOREOVER, IF CREDITS HAD BEEN "BOUGHT", THEY WOULD HAVE TO HAVE BEEN BOUGHT FROM SUBORDINATES IN THE OFFICE MAKING THE CLAIM YET WE HAD NOT OBSERVED ANY INDICATION OF INTENT TO CONDUCT AN INVESTIGATION OF THE SUBORDINATE OFFICE.

7. ALTHOUGH EMBASSY LEGAL ADVISER DID PERSONALLY SEE A NUMBER OF THOSE FILES, THE RESPONSIBLE OFFICER IN CHARGE OF THE CUSTODY OF THE FILES DECLINED TO GIVE THE LEGAL ADVISER COPIES OF THE DOCUMENTATION IN THE FILES. EMBASSY ATTEMPTED TO WORK OUT A SOLUTION WITH THE BUREAU OF PRISONS AND DEPARTMENT OF JUSTICE. ON BASIS OF ADVICE GIVEN BY BUREAU OF PRISONS AND JUSTICE OFFICIALS, THE LIST OF PROBLEM CASES WAS REDUCED PER REFTEL.

8. COMMENT: EMBASSY IS OPTIMISTIC THAT ATTORNEY GENERAL'S OFFICE WILL OVERCOME BUREAUCRATIC PROBLEM POSED BY PREVENCIÓN SOCIAL. IN MEETING WITH BAEZA, EXECUTIVE OFFICER INDICATED APPRECIATION OF DESIRE OF BOTH PARTIES TO PREPARE AS MANY CASES AS POSSIBLE FOR TRANSFER PRIOR CHRISTMAS, WITH RESULTANT INCOMPLETE INFORMATION IN SOME CASES. HE EXPRESSED VIEW THAT WE SHOULD NOW ATTEMPT TO PREPARE CASES AS CAREFULLY

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AS POSSIBLE AND AVOID PROBLEMS SUCH AS THAT POSED
BY FAILURE TO TRANSMIT COMPLETE FILES. MCANINCH
STATED THAT HE HOPED BOTH SIDES WILL CONTINUE TO HAVE
SOME FLEXIBILITY IN THIS AREA AND THAT GOM SHOULD
FEEL FREE TO PURSUE ANY PROBLEMS ARISING POST TRANSFER
AS HE HAD JUST DONE.

9. FOR CONSULATES: IT IS APPARENT THAT THE WORK CREDIT
PROBLEM IS LIKELY TO BE A CONTINUING ONE AND THE
CONSULATES ARE ADVISED TO ASCERTAIN TO THE EXTENT
POSSIBLE THAT ALL CREDITS ARE GIVEN TO INDIVIDUAL
PRISONER BEFORE TRANSFER. LUCEY

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